No. 10- COURTS ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2)(b)]

Description of Case

W.P. NO. 307 of 2001 (M/S)

State of U.P.

Versus

Commissioner Kumaun Division, Nainital and others.

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(B.S. Verma, J.)

Date: 04-04-2006 ***Initials of Judge***

Revised Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (M/S) No. 307 of 2001
Old Civil Misc. Writ Petition No. 26212 of 1994

State of U.P. through the Collector, Nainital.

… **Petitioner.**

Versus

1. Commissioner Kumaun Division, Nainital.
2. Guru Bux Singh, S/O Sri Chaudhary Lal,
   Santosh Singh S/O Chaudhary Lal,
   Both R/O village Khanpur Purab, Tehsil Gadarpur,
   District Nainital.

….. **Respondents.**

Sri Nand Prasad, Learned Standing Counsel for the petitioner-State.
Sri Vijay Bhatt, learned counsel for the private respondents no. 2 & 3.

Date: April 04, 2006.

(Hon'ble B.S. Verma, J.)

By means of this writ petition, the petitioner –State has prayed for quashing the impugned order dated 14.10.1993, passed by the respondent no. 1 in ceiling Appeal No. 25 of 1992-93, Guru Bux Singh and another Vs. State of U.P. whereby the learned Commissioner has allowed Appeal No. 25 of 1992-93 and Appeal No. 28 of 1992-93 whereby the order of the Prescribed Authority dated 27.5.1993 was modified to the extent that the land purchased by the respondent nos. 2 and 3 be not included in the Ceiling proceedings.

Relevant facts giving rise to this writ petition are that before the Prescribed Authority/Additional District Magistrate Nainital Ceilling Case No. 51/11 of 1992-93 was filed by the State and the proceedings were initiated as the land of Khata holder Barkat Singh was affected. In earlier ceiling proceedings, irrigated land in area of 0.445 hectare belonging to landholder Barakat Singh was declared as surplus vacant land. Barkat Singh/Gurubux Singh preferred appeal before the Commissioner Kumaon Nainital. The

appeal preferred by Gurubux was decided by Additional Commissioner on 3-8-92 and the case was remanded with the direction that the concerned parties be served with notice under Section 10(2) and Rule 8 of the Act. The Prescribed Authority after remand of the case decided the matter afresh vide order dated 17.11.1992 thereby land measuring 2.445 was declared as surplus vacant land. Khata holder Gurubux Singh filed appeal before the Commissioner Kumaun which was decided on 20.2.1993 and the case was again remanded with the direction that the concerned parties be heard after serving them notice under Section 10(2) of the Act and the case be decided afresh. The Prescribed Authority after affording opportunity of hearing to the appellants/objectors proceeded with the case. Ultimately, the Prescribed Authority rejected the objections filed by the objectors including Guru Bux Singh and Santosh Sigh and declared irrigated land measuring 2.445 hectare as surplus land. Aggrieved by the said order dated 27.5.1993 passed by the Prescribed Authority, respondent nos. 2 and 3 preferred appeal before the Commissioner which was registered as Ceiling Appeal No. 25 of 1992-93. the learned Commissioner after hearing both the parties and perusing the material on record allowed the appeal and the impugned order dated 27.5.1993 was modified to the extent that the land purchased by respondent nos. 2 and 3 be not included in the ceiling proceedings and passed the order dated 14.10.1993, which gave rise to the present writ petition.

I have heard counsel for the parties and perused the entire material on record including the impugned order dated 14.10.1993 passed by the respondent no. 1.

A perusal of the record shows that admittedly respondent nos. 2 and 3 are that grandsons of Barkat Singh and they do not fall in the definition of family. The inclusion of disputed land purchased by the respondent nos. 2 and 3 independently does not appear to be justified. It has not been disputed that at the time

of purchase of land by them, both the respondent nos. 2 and 3 were major. The learned Commissioner has considered all the aspect of the case. It was observed by him that ceiling proceeding was initiated against Barkat Singh alone. The learned Commissioner has given a concrete finding that there is no evidence to the effect that price of the land purchased by respondent nos. 2 and 3 was borne by any body else. A perusal of the record also shows that both Guru Bux Singh and Santosh Singh are living separately. Considering all these facts and circumstances, the learned Commissioner has modified the order dated 27.05.1993 passed by the Prescribed Authority. The finding recorded by the learned Commissioner to the effect that Guru Bux Singh and Santosh Singh have purchased the land independently is a finding of fact, which cannot be examined in exercise of writ jurisdiction, unless any manifest error apparent on the face of record is shown. Only it has to be examined whether the learned Commissioner has committed a manifest error of law by excluding the land from ceiling area of the petitioner.

The learned counsel for the respondent nos. 2 and 3 vehemently submitted that in the present case, the land was purchased and held by major sons of tenure holder, hence that cannot be declared surplus under the U.P Imposition of Ceiling on Land Holdings Act, 1961. In support of his contention, the learned counsel for the responders has placed reliance on a Division Bench Judgment of the Allahabad High Court in the case of ***"Mohammad Abbas Vs. State of U.P. and others" (1979, A.W.C., Page 23)*** wherein it has been held that "if land is held by the major sons of the tenure-holder, it is neither to be included in the holding of the tenure holder nor can it be included in the land sought to be declared surplus." In para no. 4 it has been observed that "Since land held by the major sons of the tenure-holder was not land which would have been declared surplus under the Act, the transfer of that land could not be ignored in determining the ceiling area applicable to the tenure holder although the land was transferred after the 24th day of January 1971. I have gone through the case-law and I am in

full agreement with the view taken by the Allahabad High Court. As stated earlier, the fact that the respondent nos. 2 and 3 were major at the time of purchase of land by them.

In the facts and circumstances of the case and having gone through the entire record, I find that the impugned order dated 14.10.1993 passed by the learned Commissioner does not suffer from any manifest error, illegality, perversity or infirmity. The impugned order dated 14.10.1993 does not call for any interference by this Court. The writ petition is liable to be dismissed.

The writ petition is hereby dismissed. No order as to costs.

(B.S. Verma, J.)

RCP